

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 634 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

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ZULFIKAR ALI SAIYED

Versus

UNION OF INDIA

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Appearance:

MR ARUN H MEHTA for Petitioner

DELETED for Respondent No. 1, 3, 4

M/S MG DOSHIT & CO for Respondent No. 2

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 11/03/98

ORAL JUDGEMENT

1. The petitioner, a direct recruit to the cadre of Dy.Superintendent of Police, has raised the question of application of Service Rules regarding Quota and Rota between the direct recruits and promotees. The petitioner is a direct recruit of 1st September 1963 to the post of Dy.Superintendent of Police. According to the ratio, 70% of the total number of permanent appointments on the sanctioned cadre of Dy.Superintendent of Police are to be filled in by promotion and the remaining 30% posts are to be filled in by way of direct recruitment. It is submitted that even though this ratio has taken effect from 1st January 1960, rule is not

followed and the promotees are in excess of their quota. The petitioner has, therefore, prayed that the excess promotee VU Khambolja should be pushed down and the petitioner's claim for seniority over him be accepted.

2. In para 3.1 of the petition, the petitioner has stated as follows:-

"3.1 Shri V.U.Khambolja, over whom the petitioner claims seniority has already retired and is dead. And hence, he cannot be joined as party respondent. In any case, while fixing seniority of the petitioner, the said Shri Khambolja is not likely to be adversely affected."

3. In the affidavit-in-reply filed on behalf of the Government, Shri P.G.Gupta, Deputy Secretary, Home Department, in para 5, has stated as follows:-

"With reference to para 6 of the petition, it is stated that it is true that the prescribed quota was of 30:70 for direct recruits and promotees from 1.5.60 as mentioned in para 4 above. However, it may be stated that the first batch of direct recruits in Gujarat State joined in the year 1963. As such the division between the direct and the promotees according to the quota is determined from 1963. However, it may at the outset be stated that documentation of the case takes into account events from 1963 onwards. The vacancies during the years 1960 to 1962 are not counted for because of non-availability of full of records. However, it was safe in proceeding on the available material from 1963 because there was no officer of pre-1963 vintage whose name figured for the purpose of the seniority list. For determining appointment of the direct recruits and the promotees and for determining the number of vacancies to be allotted to the direct recruits and promotees, the calendar year has been taken as unit."

It is, thus, clearly admitted that even though the quota is in force from 1960, the promotees are taken and no direct recruitment is made till 1963. Therefore, the quota of direct recruits remained unfulfilled. In Annexure I (Page 95), the petitioner has attempted to show that if the quota rule is implemented, it will be clear as to how he would be senior to V.U.Khambolja who is a promotee of 20.11.1962 as against the petitioner who

is a direct recruitee of 1st September 1963. It is submitted that the petitioner is entitled to claim seniority over Shri Khambolja and to push down his (Khambolja's) seniority so as to observe implementation of quota rule. It is an admitted position in the affidavit-in-reply that the quota rule is not at all applied and no direct recruits are taken prior to 1963 even though the rule is in force from 1960.

4. In view of the aforesaid, this petition is required to be allowed only to the limited extent that Shri V.U.Khambolja should be pushed down and placed below the petitioner as on the date of appointment of the petitioner. It is made clear that since the petitioner is claiming to push down the seniority of Shri Khambolja only and since he is dead, this direction is issued without joining him as a party. This judgment does not affect the seniority of anyone else.

5. Subject to the aforesaid directions, rule is made absolute by directing that Shri V.U.Khambolja's name be pushed down in the seniority below the petitioner.

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mhs/-